

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEONARD SWINTON,

Plaintiff, : 11 Civ. 1176 (PAC) (HBP)

-against-

REPORT AND
RECOMMENDATION

POLICE OFFICER MCDOUGAL, et al.,

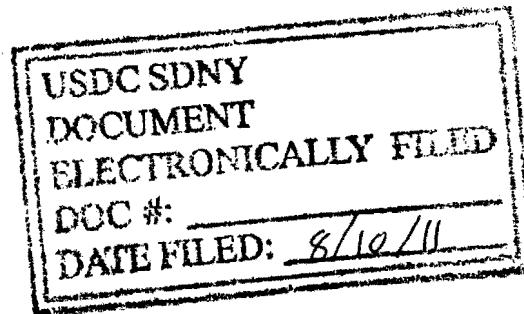
Defendants. :

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PITMAN, United States Magistrate Judge:

TO THE HONORABLE PAUL A. CROTTY, United States District
Judge,

This is a Section 1983 action brought by a now-released prisoner, alleging a false arrest by officers of the New York City Police Department. Plaintiff commenced this action on or about February 14, 2011. At the time the action was commenced, plaintiff was in the custody of the New York State Department of Correctional Services ("DOCS"). According to the DOCS website, plaintiff was released from custody in April 2011, having completed the service of his sentence. Plaintiff was not released to parole supervision; rather, he was released without any condition or supervision.



Since April 2011, neither counsel for defendants nor myself have had any contact with plaintiff. An endorsed Order that my staff sent to plaintiff's last known address -- Mid-State Correctional Facility -- on June 16, 2011 has been returned as undeliverable. According to a letter from defendants' counsel dated August 3, 2011, counsel's efforts to communicate with plaintiff have had the same result.

Plaintiff's failure to keep the Court apprised of his whereabouts is not a mere technicality. Defendant claims that Plaintiff has not responded to certain basic discovery requests, and, without plaintiff's contact information, I have no way of even setting up a conference to resolve the dispute. There is no logical reason why the Court and defendants' counsel should be compelled to spend time addressing an action in which plaintiff shows no interest.

Because it appears that plaintiff has abandoned the action, I respectfully recommend that the action be dismissed without prejudice and subject to the condition that the action be reinstated if plaintiff requests such reinstatement within the next six months. The dismissal protects defendants' counsel and the Court from wasting time on an action in which the plaintiff shows no interest. The limitations on the dismissal adequately

protect plaintiff's rights should he chose to assert those rights in the future.

OBJECTIONS

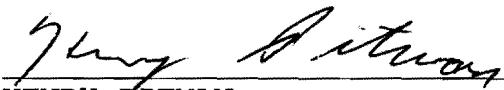
Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed.R.Civ.P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Paul A. Crotty, United States District Judge, 500 Pearl Street, Room 735, and to the Chambers of the undersigned, 500 Pearl Street, Room 750, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Crotty. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW.

Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair

Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-238 (2d Cir. 1983).

Dated: New York, New York
August 10, 2011

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copies mailed to:

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